

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KY C. RODA)	
Claimant)	
VS.)	
)	Docket No. 222,605
BROWN & BROWN, INC.)	
Respondent)	
AND)	
)	
CIGNA INSURANCE COMPANIES)	
Insurance Carrier)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on May 12, 1997.

ISSUES

The Administrative Law Judge ordered benefits. On appeal, respondent asked the Appeals Board to review the findings and conclusions regarding:

- (1) Whether claimant filed timely written claim.
- (2) Whether claimant's current alleged need for medical treatment resulted from a work-related accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the Administrative Law Judge should be affirmed.

Claimant testified that he injured his low back on September 28, 1995, when he backed the road grader he was operating into a concrete waterway. He notified respondent of the injury, and respondent provided medical treatment. Claimant testified that he also submitted a written claim while medical treatment was being provided.

K.S.A. 44-520a requires that written claim be made within 200 days of the date of accident or the date of the last payment of compensation. Providing medical treatment is payment of compensation. According to claimant's testimony, the written claim he delivered would have been within the required time limit.

Respondent disputes claimant's testimony. Respondent offers into evidence claimant's personnel file. The file does not contain a written claim form. Respondent's counsel also elicited testimony from claimant suggesting that claimant did not recall, at the time of the preliminary hearing, what the claim form looked like. The Appeals Board concludes, however, that the unexplained absence of a written claim in the personnel file does not convincingly contradict claimant's testimony. The time lapse of several years between the testimony and the written claim makes the claimant's inability to describe the form understandable. Accordingly, the Appeals Board affirms the finding by the Administrative Law Judge that claimant made timely written claim.

The Appeals Board also agrees with and affirms the decision that claimant's current need for medical treatment arose out of and in the course of his employment. After an initial period of medical treatment, claimant was incarcerated and remained incarcerated for approximately 16 months. Claimant was also involved in an altercation with police officers. These factors call into legitimate question the cause of claimant's current need for treatment. However, claimant has testified that during the period of his incarceration he was not permitted to work because of his back injury and that he continued to have ongoing back problems. Claimant's testimony links the current need for treatment with the original injury. The evidence presented by respondent raises doubts but does not make claimant's testimony improbable or establish an alternative cause for the current problems. The Appeals Board finds that claimant has met his burden of establishing that the injury arose out of and in the course of employment.

WHEREFORE, the Appeals Board finds that the Order by Administrative Law Judge Bruce E. Moore, dated May 12, 1997, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

c: M. John Carpenter, Great Bend, KS
Vincent A. Burnett, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director